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**2010 EXPLANATION OF SIGNIFICANT DIFFERENCES
KEARSARGE METALLURGICAL CORPORATION
SUPERFUND SITE
CONWAY, NEW HAMPSHIRE**

APRIL 19, 2010

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1, NEW ENGLAND**



**2010 EXPLANATION OF SIGNIFICANT DIFFERENCES
KEARSARGE METALLURGICAL CORPORATION
APRIL 19, 2010**

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**DECLARATION FOR THE
EXPLANATION OF SIGNIFICANT DIFFERENCES**

**KEARSARGE METALLURGICAL CORPORATION SUPERFUND SITE
CONWAY, NEW HAMPSHIRE**

April 19, 2010

SITE NAME AND LOCATION

Site Name: Kearsarge Metallurgical Corporation Superfund Site

Site Location: Conway, New Hampshire

IDENTIFICATION OF LEAD AND SUPPORT AGENCIES

Lead Agency: United States Environmental Protection Agency (USEPA)

Support Agency: New Hampshire Department of Environmental Services (NHDES)

STATEMENT OF PURPOSE

This decision document sets forth the basis for the determination to issue the attached Explanation of Significant Differences (ESD) for the Kearsarge Metallurgical Corporation Superfund Site (the Site) located in Conway, New Hampshire. This ESD describes the changes that implement Institutional Controls at the Site.

STATUTORY BASIS FOR ISSUANCE OF THE ESD

In accordance with Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9617(c), Section 300.435(c)(2)(i) of the National Contingency Plan (NCP), 40 CFR § 300.435(c)(2)(i), and USEPA guidance OSWER [Office of Solid Waste and Emergency Response] Directive 9200.1-23P (A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents), if USEPA determines that differences in the remedial action significantly change, but do not fundamentally alter the remedy selected in the Record of Decision (ROD) with respect to scope, performance, or cost, USEPA shall publish an Explanation of the Significant Differences (ESD) between the remedial action being undertaken and the remedial action set forth in the ROD and the reasons such changes are being made.

USEPA has determined that the adjustments to the September 28, 1990 Record of Decision (1990 ROD) for the Kearsarge Metallurgical Corporation Superfund Site, as explained in this ESD, are significant, but do not fundamentally alter the overall remedy for the Site with respect to scope, performance, or cost. Therefore, this ESD is being properly issued.

In accordance with Section 117(d) of CERCLA and Section 300.825(a) of the NCP, this ESD will become part of the Administrative Record for the Site, and will be available for public review at the USEPA Region 1 Record Center in Boston, Massachusetts, and the Conway Public Library, Main Street, Conway, New Hampshire, 03818.

BACKGROUND

The September 28, 1990 ROD did not include institutional controls as part of the remedy. The 2008 Five-Year Review deferred an overall protectiveness determination until additional information could be obtained and institutional controls implemented. Since groundwater cleanup levels have not yet been achieved, a protectiveness determination for the Site cannot be made until institutional controls are in place. This ESD revises the remedy to require the implementation of institutional controls (ICs).

OVERVIEW OF THIS ESD

The 1990 ROD and the 1992 and 2003 ESDs did not include a requirement for institutional controls. The original and modified remedy anticipated the attainment of cleanup standards with the active pumping and treatment of the groundwater.

EPA completed the third five-year review for the site in 2008. The overall protectiveness was deferred until further information was obtained. The review identified the need for institutional controls to protect human health through restrictions on the use of the groundwater underlying the Culvert Area. The excerpt below is from the Five-Year Review:

Operable Unit 2:

A protectiveness determination of the remedy at OU2 can not be made at this time and must be deferred until further information is obtained. Further information will be obtained by taking the following actions:

- (1) Completion of an MNA Evaluation Study including additional delineation of the contaminant concentrations in the aquitard to determine the remaining mass, modeling of the groundwater, and evaluation of MNA criteria applicable to the Site and timeframes till cleanup standards are met;
- (2) Evaluation of the ability to implement and the implementation of institutional controls;
- (3) Potential remedy change to MNA, if appropriate, through future decision document with a public meeting and comment period, and;
- (4) Evaluation of the vapor intrusion pathway using appropriate guidance.

Item 1 is currently being evaluated. Item 2 is the subject of this ESD. Item 3 may be implemented based on the evaluation of the study called for in Item 1. Item 4 was completed in 2008 and found that there was no risk from vapor intrusion at that time.

Although public water is provided to all surrounding properties and no wells presently exist that would extract contaminated groundwater from the Site, Institutional Controls in the form of a notice of activity and use restrictions were placed on the deeds of the two abandoned properties. New Hampshire Superior Court issued an Order on March 12, 2010 and NHDES recorded that Order on March 19, 2010, allowing NHDES to place a notice of activity and use restrictions on each deed and to monitor the deeds until cleanup standards are achieved. The Order requires the following restrictions:

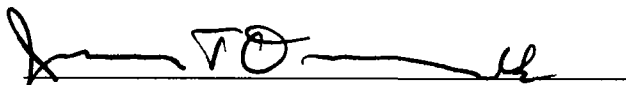
- (a) The following activities and uses are prohibited on the Properties:
 - (i) Extraction of groundwater for purposes other than carrying out the remedy specified by the State or EPA.
 - (ii) Any activity, including soil excavation and groundwater extraction, interfering with the remedy established by the State or EPA.
 - (iii) Use as a residence, school, nursery, recreational area (such as a park or athletic field) or any other use at which a child's presence is likely or intended.

Therefore, this document modifies the remedy to include the institutional controls necessary to ensure that the remedy is protective of human health.

The State of New Hampshire has reviewed and commented on this ESD and concurs with its issuance.

DECLARATION

For the foregoing reasons, by my signature below, I approve the issuance of this Explanation of Significant Differences for the Kearsarge Metallurgical Corporation Superfund Site in Conway, New Hampshire, and the changes stated therein.


James T. Owens III, Director
Office of Site Remediation and Restoration
USEPA, Region 1

4/19/10
Date

EXPLANATION OF SIGNIFICANT DIFFERENCES

Kearsarge Metallurgical Corporation Superfund Site

April 2010

I. Introduction

A. Site Name and Location

Site Name: **Kearsarge Metallurgical Corporation Superfund Site**

Site Location: **Town of Conway, New Hampshire**

B. Lead and Support Agencies

Lead Agency: **US Environmental Protection Agency**

Support Agency: **New Hampshire Department of Environmental Services
(NHDES)**

C. Legal Authority

Under Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹, Section 300.435(c) of the National Contingency Plan (NCP)², and U.S. Environmental Protection Agency (EPA) guidance³, if EPA determines that differences in the remedial action significantly change but do not fundamentally alter the remedy selected in the Record of Decision (ROD) with regard to scope, performance, or cost, EPA shall publish an explanation of the significant differences (ESD) between the remedial action being undertaken and the remedial action set forth in the ROD as well as the reasons such changes are being made.

D. Summary of Circumstances Necessitating this Explanation of Significant Differences

The 2008 Five-Year Review deferred an overall protectiveness determination until additional information could be obtained and institutional controls implemented. An excerpt from the Five-Year Review and the additional information required are described in Section II. C., below.

The September 28, 1990 ROD did not include institutional controls as part of the remedy. Since groundwater cleanup levels have not yet been achieved, a

¹42 U.S.C. Section 9617(c).

²40 C.F.R. Section 300.435(c).

³Office of Solid Waste and Emergency Response (OSWER) Directive 9200.1-23P

KEARSARGE METALLURGICAL CORPORATION SUPERFUND SITE, CONWAY, NH
Explanation of Significant Differences, April 2010

protectiveness determination for the site cannot be made until institutional controls are in place. This ESD revises the remedy to require the implementation of institutional controls (ICs).

The Five-Year Review recognized that implementation of ICs at the Kearsarge Superfund Site would be complicated. The property constituting the site has been abandoned and the ownership of the two parcels upon which institutional controls need to be placed is uncertain. EPA has worked with the State of NH to resolve the ownership issues through action in the New Hampshire Superior Court so that ICs in the form of activity and use restrictions can be placed on the deeds of the two properties.

E. Availability of Documents

This ESD and supporting documentation shall become part of the Administrative Record for the site. The ESD, supporting documentation for the ESD, and the Administrative Record are available to the public at the EPA New England Records Center and at a location close to the site in Conway, New Hampshire.

US Environmental Protection Agency	Hours: M-F	10:00 am - 1:00 pm
Region I Records Center		
John W. McCormack Building	and	2:00 pm - 5:00 pm
Five Post Office Square		
Boston, MA 02109		
(617) 918-1440		

Conway Public Library	Hours: M-Th	10:00 am - 8:30 pm
Main Street	F- Sa	10:00 am - 5:30pm
Conway, NH 03818		
(603) 447-5552		

II. Summary of Site History, Contamination Problems, and Selected Remedy

A. Site History and Contamination Problems

Kearsarge Metallurgical Corporation (KMC) manufactured precision stainless steel castings from 1964 until 1982 on four acres of industrial land located on Hobbs Street in Conway, New Hampshire. See Figure 1, Site Location Map. KMC is now defunct.

The KMC site is comprised of three commercially zoned lots along Hobbs Street: lots 139, 140, and 182 as depicted on Map 227 at the Conway Tax Assessor's Office. Lot 139 is currently owned by OCR, Inc. Lot 140 is owned by KMC. Lots 139 and 140 are referred to as the Culvert Area. Lot 182 is owned by Conway Business Park, LLC. Lot 182 is referred to as the Hobbs Street Area.

The KMC site is bounded to the south by Pequawket Pond; to the east by a wooded wetland; to the west by Hobbs Street and American Air Systems; to the northwest by

Hobbs Street and Conway Business Park (formerly Carroll Industries); and to the north by C&C Thibodeau Properties LLC (formerly Yield House/Renovator Supply, Inc.) Town water and sewer hookups are available to all properties along Hobbs Street near the site. Refer to Figure 2, Site Property Boundary and General Map.

The KMC site was placed on EPA's National Priorities List on September 21, 1984, after investigations showed that groundwater under the site was contaminated with volatile organic compounds (VOCs) including 1,1,1-trichloroethane (1,1,1-TCA). Evidence of industrial waste produced from the cast-making processes (casting, cleaning, finishing, and pickling) also was found on the site including a large 15-foot high pile of approximately 9,000 cubic yards of solid waste. Finally, a septic tank, its contents, and the associated leach field soils were contaminated with chlorinated solvents. The waste piles, the septic tank, and the leach field were identified as potential sources of the continuing groundwater contamination.

B. Summary of the Selected Remedy

The 1990 ROD addressed contamination at the KMC site by selecting both source control and management of migration response actions. The ROD also required long-term groundwater monitoring to evaluate progress toward attainment of the cleanup goals. Operable Unit 1 addressed source control. The selected remedy included removal and off-site disposal of two waste piles, the septic tank and its contents, and the leaching field soils down to the water table or to a depth of six feet.

Operable Unit 2 addressed the management of contaminant migration. The selected remedy included the installation of four extraction wells west of Hobbs Street (Hobbs Street Area) with a pumping rate of 40 gpm, and the installation of ten extraction wells east of the former KMC building (Culvert Area), with a pumping rate of 2.5 gpm.

The groundwater treatment plant was equipped with a pretreatment process consisting of chemical precipitation and clarification that was designed to remove chromium, nickel, iron, manganese, and suspended solids. The extracted groundwater then was treated by multimedia filtration to remove suspended solids, and air stripping to remove VOCs. Activated carbon was used to treat the contaminated off-gas from the air stripper. The treated groundwater was discharged to the local publicly owned treatment plant.

The KMC property and the OCR property have been abandoned. Those two abandoned properties in the Culvert Area encompass the area where groundwater contamination remains above cleanup standards. See table below and Figure 2.

The first ESD was issued in August, 1992. At that time, the remedy was modified to allow for the offsite disposal of contaminated soil at a licensed Subtitle C RCRA landfill *in-lieu* of incineration. The ESD also corrected a typographical error in the cleanup level for chromium in the waste pile.

The second ESD was issued in September, 2003. The remedy was modified to remove additional material acting as a continuing source of groundwater contamination; to improve the extraction system by installing a new groundwater collection trench in the source area; and to correct the site-specific groundwater cleanup goal for 1,1-DCA so that it was consistent with current toxicity data. The excavation and collection modifications were completed in February, 2004.

As of May 31, 2004, operation and maintenance (O&M) at the site became the responsibility of New Hampshire Department of Environmental Services (NHDES) in accordance with the EPA Fact Sheet entitled *Transfer of Long-Term Response Action (LTRA) Projects to States* (EPA, July 2003). The following tasks were completed prior to turnover of the LTRA to NHDES.

- Change out of granular carbon in exhaust system.
- Removal and disposal of sludge in the sludge holding tank.
- Change out of packing media in air stripper tower.
- Letter from EPA to NHDES regarding future equipment disposal.

The groundwater remediation system operated continuously from the fall of 1993 to the winter of 2005. The Hobbs Street extraction system was shut down in February, 2004, because the cleanup goals were attained in that area of the site.

In December, 2005, EPA concurred with the decision made by NHDES to discontinue pumping and treating groundwater in the Culvert Area. That decision was supported by the sampling data which showed that the extracted water was below cleanup standards and that diffusion-limited processes made groundwater extraction inefficient in removing contaminants. The mass of volatile organic compounds (VOCs) removed relative to the volume of water being pumped is extremely low.

The shutdown of the system was contingent on continued groundwater monitoring both to assess the response of the groundwater plume to the changed conditions resulting from the cessation of groundwater extraction, and to assess whether the contaminant plume is stable and Monitored Natural Attenuation (MNA) could be an appropriate alternative to active pumping and treatment of the groundwater. The completion of the MNA evaluation is scheduled for December, 2011.

Figure 3, the Groundwater Plume Map, is the site with the monitoring well network and the green-shaded area in the center of the property depicts the area where selected contaminants exceed the cleanup levels. The table below shows the two contaminants of concern that were found to exceed the clean up levels at the site in 2009.

KEARSARGE METALLURGICAL CORPORATION SUPERFUND SITE, CONWAY, NH
Explanation of Significant Differences, April 2010

Contaminants that Exceeded the Cleanup Levels in 2009		
Contaminant of Concern	Cleanup Level* (ppb)	Maximum (ppb)
1,1,1-Trichloroethane (1,1,1-TCA)	200	260
1,1- Dichloroethylene (1,1-DCE)	7	386
Notes: * Cleanup levels are based on Maximum Contaminant Levels (MCLs) under the Safe Drinking Water Act were used as cleanup levels. The contaminants and the wells where cleanup levels were exceeded in 2009: 1,1,1-TCA: MW 3010, 260ppb. 1,1 – DCE: EW-09, 7.3 ppb; MW-3003, 23 ppb; MW-3006, 8.9 ppb; MW-3008, 231ppb; MW-3009 21ppb; MW-3010, 386 ppb; MW-3011, 21 ppb.		

C. Five Year Review

EPA completed the third five-year review for the site in 2008. The overall protectiveness was deferred until further information was obtained. The review identified the need for institutional controls to protect human health through restrictions on the use of the groundwater underlying the Culvert Area. The excerpt below is from the Five-Year Review:

Operable Unit 2:

A protectiveness determination of the remedy at OU2 can not be made at this time and must be deferred until further information is obtained. Further information will be obtained by taking the following actions:

- (1) Completion of an MNA Evaluation Study including additional delineation of the contaminant concentrations in the aquitard to determine the remaining mass, modeling of the groundwater, and evaluation of MNA criteria applicable to the Site and timeframes till cleanup standards are met;
- (2) Evaluation of the ability to implement and the implementation of institutional controls;
- (3) Potential remedy change to MNA, if appropriate, through future decision document with a public meeting and comment period, and;
- (4) Evaluation of the vapor intrusion pathway using appropriate guidance.

Item 1 is currently being evaluated. Item 2 is the subject of this ESD. Item 3 may be implemented based on the evaluation of the study called for in Item 1. Item 4 was completed in 2008 and found that there was no risk from vapor intrusion at that time.

III. Basis for the Document

Basis for Institutional Controls

The 1990 ROD and the 1992 and 2003 ESDs did not include a requirement for institutional controls. The original and modified remedy anticipated the attainment of cleanup standards with the active pumping and treatment of the groundwater.

The groundwater remediation system operated continuously from the fall of 1993 to the winter of 2005. In December, 2005, the decision was made by NHDES, with EPA concurrence, to discontinue pumping and treating the groundwater.

The decision to shut down the system was supported by sampling data that showed that the extracted water was below cleanup standards. The mass of volatile organic compounds (VOCs) relative to the volume of water being pumped was low, and it was believed that the plume would stabilize and reach cleanup levels through monitored natural attenuation in a reasonable time frame.

The system shutdown was contingent on continued groundwater monitoring to assess the response of the groundwater plume to changed conditions and to assess whether MNA was an appropriate alternative to active pumping and treatment of the groundwater. The evaluation to determine if MNA is an appropriate change to the remedy will be completed in 2010.

Although no one is currently using the groundwater, the use of the groundwater is not restricted. Therefore, the remedy is not protective of human health should the groundwater be used in the future for drinking water or other purposes. The placement of institutional controls on the groundwater in the form of activity and use restrictions and restrictions on soil excavation on the abandoned KMC and OCR properties will ensure that the remedy is protective until cleanup levels are achieved.

The Five-Year Review recognized that it is problematic to place institutional controls on abandoned property. One form of institutional control frequently used at groundwater cleanup sites in New Hampshire is the creation of a groundwater management zone and the issuance of a groundwater management permit. However, it is not possible to issue a groundwater management permit when there is no landowner of record. Therefore, a groundwater management zone has not been created at the Kearsarge site.

EPA has worked with the State of New Hampshire to address the issue of appropriate institutional controls at the site. The State of New Hampshire obtained an Order from the New Hampshire Superior Court which allows the state to access the abandoned properties and to restrict the use of groundwater, "...as may be necessary to protect the public health and the environment from hazardous wastes and materials disposed of in the soil and groundwater..." on the properties. That Order was issued by New Hampshire

Superior Court on March 12, 2010 and that Order was recorded by NHDES on March 19, 2010.

IV. Description of Significant Differences

The modification to the remedy is summarized below.

Institutional Controls

Although public water is provided to all surrounding properties and no wells presently exist that would extract contaminated groundwater from the site, Institutional Controls in the form of a notice of activity and use restrictions was placed on the deeds of the two abandoned properties. The Order the State obtained from the NH Superior Court allows NHDES to place a notice of activity and use restrictions on each deed and to monitor the deeds until cleanup standards are achieved. The Order requires the following restrictions:

- (a) The following activities and uses are prohibited on the Properties:
 - (i) Extraction of groundwater for purposes other than carrying out the remedy specified by the State or EPA.
 - (ii) Any activity, including soil excavation and groundwater extraction, interfering with the remedy established by the State or EPA.
 - (iii) Use as a residence, school, nursery, recreational area (such as a park or athletic field) or any other use at which a child's presence is likely or intended.

The State of New Hampshire will place activity and use restrictions on the deeds to the abandoned property as soon as possible after the Superior Court order takes effect.

Therefore, this document is modifying the remedy to include the institutional controls necessary to ensure that the remedy is protective of human health.

V. Supporting Agency Comments and Community Acceptance

NHDES has participated with EPA in developing the changes to the selected remedy described herein and concurs with those changes and with the approach adopted by EPA (see letter of concurrence provided in Appendix A).

VI. Statutory Determination

EPA believes that the remedy as adjusted herein is protective of human health and the environment, complies with all federal and state requirements that are applicable or relevant and appropriate to this remedial action, meets the remedial action objectives specified in the 1992 ROD, and is cost effective and satisfies the requirements in Section 121 of CERCLA.

VII. Administrative Record

In accordance with Section 117(d) of CERCLA and §300.825(a) of the NCP, this ESD will become part of the Kearsarge Metallurgical Corporation Superfund Site's Administrative Record that is available for public review at:

EPA Region I Records Center
John W. McCormack Building
Five Post Office Square
Boston, Massachusetts 02109
617-918-1440

Conway Public Library
Main Street
Conway, New Hampshire 03818

Additionally, a notice that briefly summarizes the changes and the reasons for making the changes described in this ESD will be published in a major local newspaper of general circulation following the signing of this ESD.

Figures

Figure 1 – Site Location

Figure 2 – Site Property Bounds and General Features

Figure 3 – Groundwater Plume Map

Appendix A:

NHDES Concurrence Letter April 6, 2010.

Appendix B:

Recorded Court Order

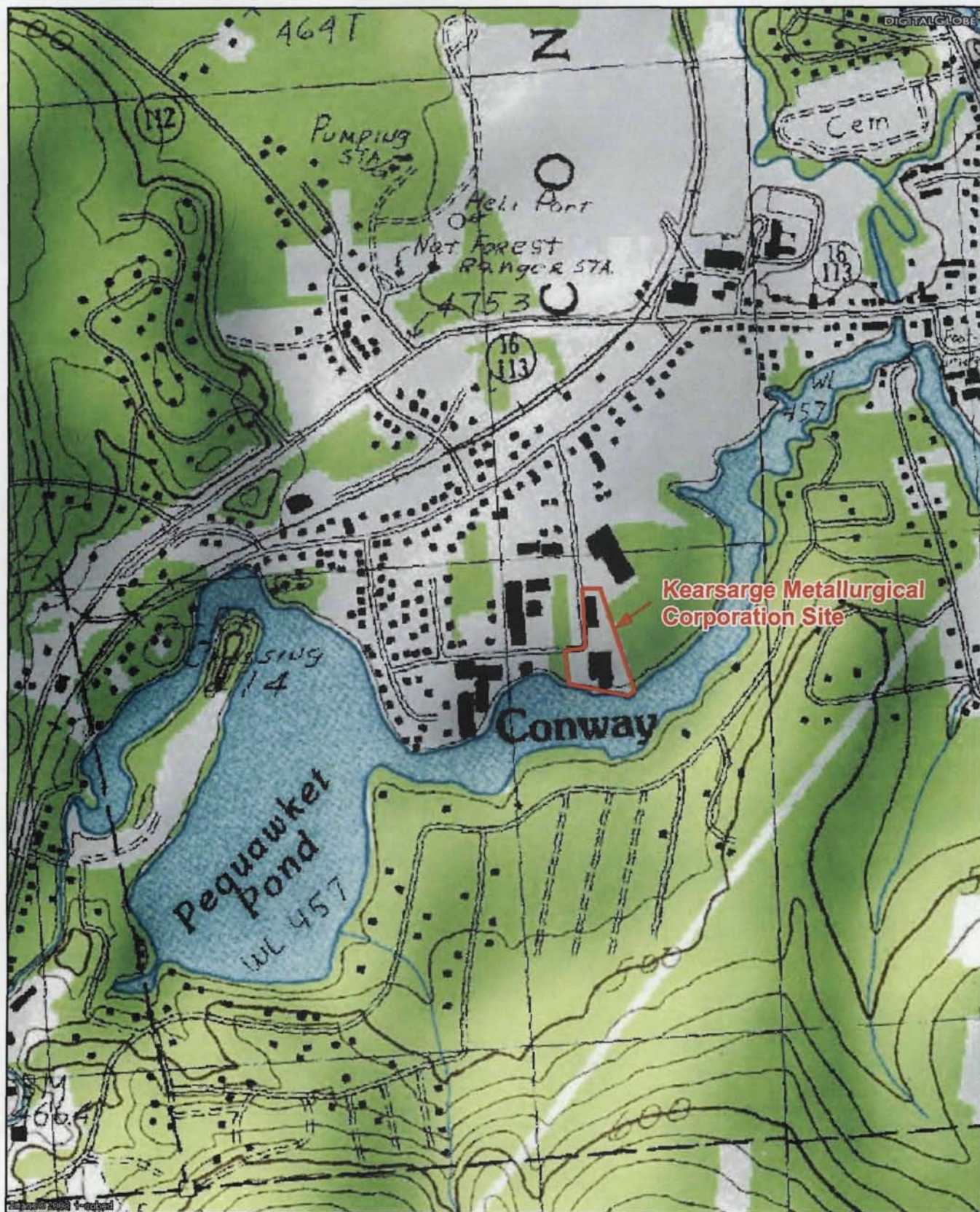
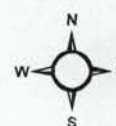
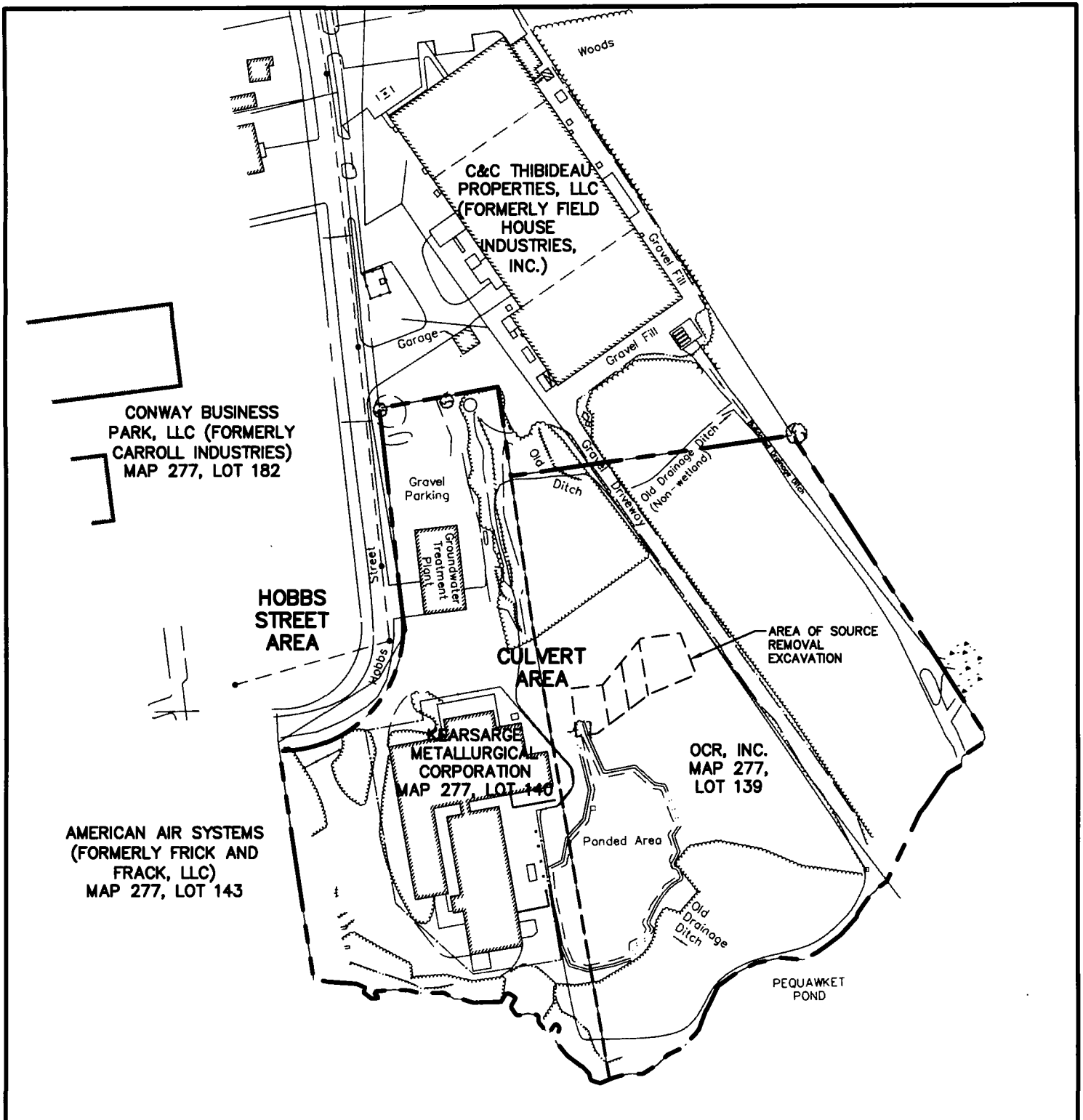


Figure 1
Explanation of Significant Differences
For Kearsarge Metallurgical Corporation
Superfund Site
Town of Conway,
Carroll County, New Hampshire

0 500 1,000
 Feet



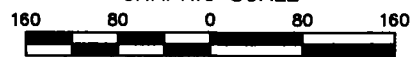
This figure was created by the US EPA Region 1
 GIS Center on Dec. 28, 2009. Map Tracker ID: 6511
 Map Source: USGS 1987



LEGEND

— — — — — PROPERTY BOUNDARY

GRAPHIC SCALE



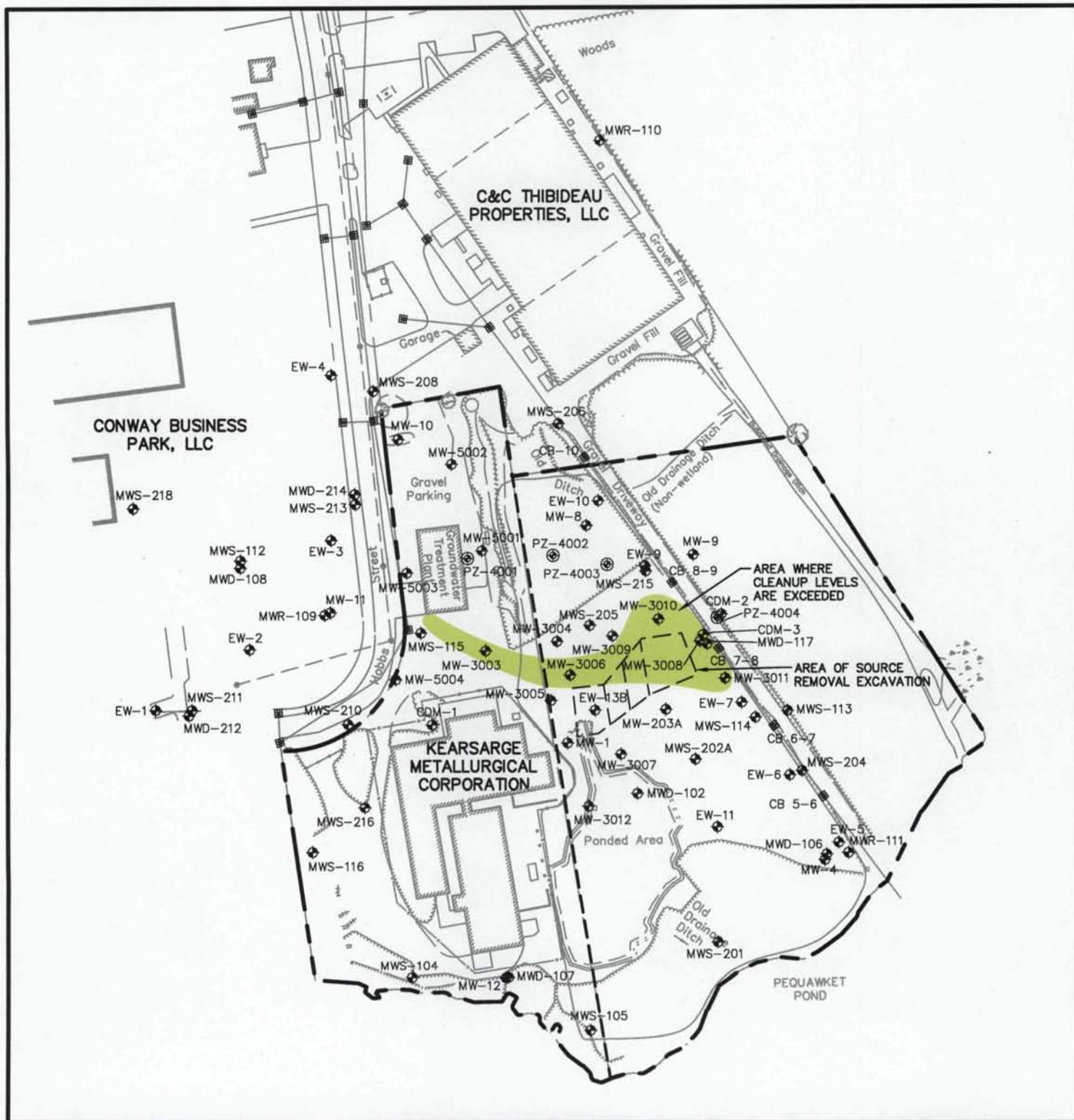
APPROXIMATE SCALE IN FEET

PROPERTY BOUNDARY MAP

Kearsarge Metallurgical Corporation

Conway, New Hampshire

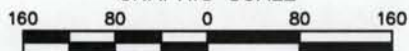
Coord sys: NAD83 NHSP FT	Issued: DEC 2009
Drawn By: BEG	Revised:
Ck'd By: BN	Map ID:
Apprv'd By: BN	Figure 2



LEGEND

- CATCH BASIN
- ⊕ PIEZOMETER
- ⊙ MONITORING WELL
- — — — — PROPERTY BOUNDARY

GRAPHIC SCALE



APPROXIMATE SCALE IN FEET

GROUNDWATER PLUME MAP

Kearsarge Metallurgical Corporation

Conway, New Hampshire

Coord sys: NAD83 NHSP FT	Issued: DEC 2009
Drawn By: BEG	Revised:
Ck'd By: BN	Map ID:
Apprv'd By: BN	Figure 3

APPENDIX A:

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

CONCURRENCE LETTER OF APRIL 6, 2010



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

April 6, 2010

James T. Owens III, Director
Office of Site Remediation and Restoration
EPA - New England, Region I
1 Congress Street, Suite 1100
Boston, MA 02114-2023

**RE: Explanation of Significant Differences
Kearsarge Metallurgical Corporation Superfund Site
Conway, New Hampshire – DES #198708002, Project RSN #13323**

SUBJECT: Declaration of Concurrence

Dear Mr. Owens:

The New Hampshire Department of Environmental Services (Department) has reviewed the Explanation of Significant Differences (ESD), dated March 2010, for the Kearsarge Metallurgical Corporation Superfund Site (Site) in Conway, New Hampshire. The United States Environmental Protection Agency (EPA) prepared this ESD in accordance with the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. The ESD addresses the remedial actions necessary under CERCLA, as amended, to manage potential threats to human health and the environment at the Site.

Rational for the ESD

The 1990 Record of Decision (ROD) and the 1992 and 2003 ESDs did not include a requirement for institutional controls under a natural attenuation remedy for groundwater, which would provide a mechanism for monitoring a residual groundwater plume and ensure public safety. The original ROD and ESD-modified remedy anticipated that groundwater extraction and treatment would operate until attainment of cleanup standards.

The groundwater remediation system operated continuously from the fall of 1993 to the winter of 2005. In December, 2005, the decision was made by the Department, with EPA concurrence, to discontinue extraction and treatment of the groundwater.

The decision to shut down the system was supported by sampling data showing that the extracted water met cleanup standards following the 2003 source removal action, which removed approximately 5,670 tons of chlorinated solvent-impacted soil. The mass of volatile organic compounds (VOCs) that was being removed, relative to the volume of water being extracted, was low. The Department and EPA believed that the plume would stabilize and reach cleanup levels through natural attenuation in a reasonable time frame.

The treatment system shutdown was contingent on performance of continued groundwater monitoring. The monitoring data is being used to assess whether natural attenuation is an appropriate alternative to active extraction and treatment of the groundwater. This evaluation will be completed in 2010.

Although Site groundwater is not being used for drinking water or other purposes, the use of the groundwater was not restricted at the time of EPA's Third Five-Year Review for the Site on September 26, 2008. Therefore, the remedy was deemed non-protective of human health should the groundwater be used in the future for drinking water or other purposes. The placement of institutional controls (ICs) in the form of activity and use restrictions on groundwater use and soil excavation at the Site would ensure that the remedy remains protective until cleanup levels are achieved.

Justification for the remedy change

Since groundwater cleanup levels have not yet been achieved, the 2008 Five-Year Review could not make a protectiveness determination for the Site, due to the lack of ICs. The 2008 Five Year Review deferred an overall protectiveness determination until an evaluation of natural attenuation as a remedy could be completed and ICs have been implemented. Whereas the ROD and previous ESDs did not include ICs as a component of the remedy, this ESD revises the remedy to require the implementation ICs.

The properties constituting the site have been abandoned. Given the difficulty of establishing ICs on abandoned properties, the New Hampshire Department of Justice obtained an order from the New Hampshire Superior Court that provides for the implementation of activity and use restrictions on the abandoned properties. The activity and use restrictions include limitations on groundwater use and soil excavation and prohibit the use of the properties as a residence, school or nursery. The Court Order to implement these restrictions was recorded at the Carroll County Registry of Deeds on March 19, 2010.

State Concurrence

The Department, in reviewing the referenced ESD, has determined that the remedy change is consistent with the Department's requirements for a remedial action plan and meets all of the criteria for remedial action plan approval. The selected remedy establishes a remedial action that will provide institutional controls at the site that manage the health hazard associated with exposure to groundwater and the residual contaminant source. The selected remedy will also contain contaminated groundwater within defined limits and restore groundwater quality to meet the State's Ambient Groundwater Quality Standards. Ultimately, the proposed remedial action will provide protection of human health and the environment. Therefore, the Department, acting on behalf of the State of New Hampshire, concurs with the selected remedy, as described in the ESD.

In striving to maximize the effectiveness of limited public and private resources, the Department continues to seek reasonable and practical solutions to the complex challenges associated with contaminated site cleanups. The partnership and dedication of EPA and the Department will speed up the achievement of our mutual environmental goals at this Site. As always, the Department stands ready to provide the guidance and assistance that EPA may require to take the actions necessary to fully protect human health and the environment in a cost-effective manner.

Sincerely,



Michael J. Wimsatt, P.G., Director
Waste Management Division

Waste
Management
Division

Digitally signed by Waste
Management Division
DN: cn=Waste Management
Division, o=NH DES, ou=ORCB,
email=Michele.Regan@des.nh.gov,
c=US
Date: 2010.04.06 14:17:45 -04'00'

cc: Earl Sires, Conway Town Manager
Darryl Luce, USEPA
Michael Jasinski, USEPA
Peter Roth, NHDOJ
Frederick J. McGarry, NHDES
Carl W. Baxter, NHDES
Richard Pease, NHDES
Andrew Hoffman, NHDES

APPENDIX B:

NEW HAMPSHIRE SUPERIOR COURT

ORDER OF MARCH 12, 2010, RECORDED MARCH 19, 2010

Erin P. Anton
Register of Deeds, Carroll County

STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

CASE#212-2009-CV-00162

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES**

v.

KEARSARGE METALLURGICAL CORP.

and

OCR, INC.

Order

Upon the Motion for the State of New Hampshire Department of Environmental Services ("State" or "DES"), for an order authorizing the State to enter onto certain land and improvements thereon located and owned by a defunct corporation formerly known as Kearsarge Metallurgical Corp. ("KMC") and land and improvements owned by another defunct entity known as OCR, Inc. ("OCR"), and restricting the use of soil and groundwater as may be necessary to protect the public health and the environment from hazardous wastes and materials disposed of in the soil and groundwater at the Properties, service being proper and there being no objections, the Court finds and rules as follows:

Findings of Fact

1. KMC was a New Hampshire corporation, which was dissolved on or about October 31, 1983. It owned property in Conway shown on Tax map 277, Lot 140 (the "KMC Property"). The KMC Property is contaminated by hazardous wastes. Further

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response activities by the State and the USEPA are necessary to protect human health and the environment from those wastes.

2. OCR was a Delaware corporation, which was dissolved and its assets distributed to its shareholder in 1998. OCR's owner was CML Group, Inc., a Delaware corporation that was liquidated in a chapter 11 bankruptcy proceeding in Massachusetts in 2002, *In re CML Group, Inc.*, c. 11 case no. 98-49286-HJB. OCR owned property in Conway shown on Tax Map 277 as Lot 139 (the "OCR Property"). The OCR Property is also contaminated by hazardous wastes that were released onto it from a pipe by KMC. Further response activities by the State and the USEPA are necessary to protect human health and the environment from those wastes on the OCR Property as well.

3. The Properties have been abandoned by their respective owners for many years. The Properties are not secured or insured. KMC has not paid property taxes since 1983 and OCR has not paid since 1999. Buildings on the KMC Property are in disrepair and open to the elements.

Rulings of Law

The State has met its burden for obtaining equitable relief. The State has shown a statutory enforcement right and a statutory right to equitable relief and thus need not demonstrate irreparable harm. Where the owners for the Properties are dissolved corporations and cannot respond with monetary relief, there is no adequate remedy at law. Notice to the owners of the abandoned Properties is sufficient and in accordance with due process of law.

Now therefore, it is Ordered that,

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1. The State and EPA may have access to and privilege to go upon and into all of the land and buildings at the Properties, in their sole discretion.

2. The State is permitted, privileged and authorized to excavate soils and remove or demolish any buildings, structures or paving at the Properties, in their discretion, and shall not be liable to make any compensation therefore.

3. The State and EPA may install any pipes, pumps, electrical lines, buildings and structures on the Properties as may be necessary and appropriate in their discretion to respond to hazardous wastes on the Properties and protect human health or the environment.

4. The State and EPA are authorized and directed to record such notices and deed restrictions at the registry of deeds within the chain of title to the Properties, to run with the land, restricting the use of the Properties, the soils thereon and the groundwater, as they may see fit.

5. The activity and use restrictions to be included in the notices and recorded may include the following:

(a) The following activities and uses are prohibited on the Properties:

(i) Extraction of groundwater for purposes other than carrying out the remedy specified by the State or EPA.

(ii) Any activity, including soil excavation and groundwater extraction, interfering with the remedy established by the State or EPA.

(iii) Use as a residence, school, nursery, recreational area (such as a park or athletic field) or any other use at which a child's presence is likely or intended.

6. The registry of deeds is ordered and directed to accept such notices and this Order for recordation.

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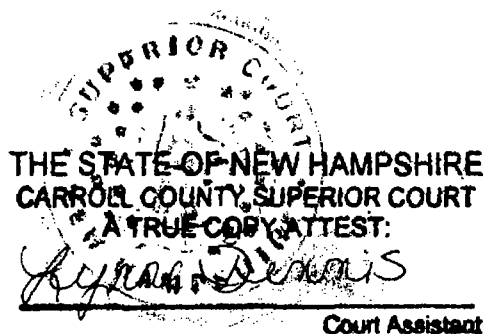
7. The State and EPA may take such other and further actions with respect to the Properties as may be reasonable and necessary to protect public health and the environment without further order of the Court.

So ordered.

3-12-10



Hon. Peter H. Fauver
Associate Justice



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